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SOME LOGICAL ASPECTS OF THE ACCESSION OF POLAND TO THE EUROPEAN COMMUNITIES

Summary. The paper has two main aims. The first aim is to put forward an explanation of the principle of superiority of the law of the European Communities (*acquis communautaire*) in relation to the system of Polish domestic law in terms of rules of legal reasoning. The second aim is to consider the validity of the above principle in terms of an analogy between the notion of the system of law and the notion of a deductive system.

Introduction

It is generally accepted by Polish lawyers that from the moment of Polish accession to the European Communities, they have to obey the principle of superiority of the law of the European Communities (*acquis communautaire*) in relation to the system of Polish domestic law. This principle can be incorporated into the system of Polish domestic law by introducing some new rules of legal reasoning. These new rules of legal reasoning can be divided into three subsets:

- rules of semiotic interpretation,
- rules of functional interpretation

and

- collision rules.

New rules of semiotic interpretation

The rules of semiotic interpretation allow us to derive legal norms from a legal text using just semiotic properties of the text¹. The set of such rules contains, for example, the following rules:

¹ A legal text is a set of inscriptions given by the lawmaker as a source of law. The Civil Code of Poland is an example of a legal text. The lawmaker is a fictitious person recognized as an author of all legal texts.

- it is forbidden to omit any fragment of a legal text during the interpretation of that text,
- it is forbidden to add any phrases to a legal text during the interpretation of that text,
- it is an obligation of the interpreter to understand any expression W of a legal text in accordance with a legal definition of this expression (the legal definition of an expression W is a definition of this expression contained in a legal text²).

The principle of superiority of *acquis communautaire* can be expressed by the following rules of semiotic interpretation:

- the rule of preference of legal definitions *sensu stricto* contained in the legal texts of the European Communities,
- the rule of preference of legal definitions *sensu largo* contained in the legal texts of the European Communities,
- the rule of preference of the legal language of *acquis communautaire*.

According to the rule of preference of legal definitions *sensu stricto* contained in the legal texts of the European Communities, if:

- the meaning of an expression W from a Polish legal text T is not sufficiently clear for the purpose of the interpreter of that legal text

and

- the text T is an implementation of the community law,

it is an obligation of the interpreter to make clear the meaning of the expression W in accordance with the legal definitions *sensu stricto* of the expression W contained in the legal texts of the European Communities, unless there are special reasons for ignoring these definitions.

According to the rule of preference of legal definitions *sensu largo* contained in the legal texts of the European Communities, if:

- the interpreter has used the rule of preference of legal definitions *sensu stricto* contained in the legal texts of the European Communities

and after that

- the meaning of an expression W from a Polish legal text T remains not sufficiently clear for the purpose of the interpreter of that legal text,

it is an obligation of the interpreter to make clear the meaning of the expression W in accordance with the legal definitions *sensu largo* contained in the

² The legal definitions can be divided into two subsets: legal definitions *sensu stricto* and legal definitions *sensu largo*. The legal definition *sensu stricto* of an expression W is placed in a legal text by the lawmaker with the intention to establish or to make clear the meaning of the expression W. The legal definition *sensu largo* of an expression W is a part of a legal text which determines the meaning of the expression W and it was placed in the legal text by the lawmaker with the intention to establish a legal norm.

legal texts of the European Communities, unless there are special reasons for ignoring these definitions.

According to the rule of preference of the legal language of *acquis communautaire*, if:

- the interpreter has used the rule of preference of legal definitions *sensu stricto* contained in the legal texts of the European Communities

and

- the interpreter has used the rule of preference of legal definitions *sensu largo* contained in the legal texts of the European Communities

and after that

- the meaning of an expression W from a Polish legal text T remains not sufficiently clear for the purpose of the interpreter of that legal text, it is an obligation of the interpreter to make clear the meaning of the expression W in accordance with:

- the interpretations of the expression W given by the Courts of the European Communities

and

- the interpretations of the expression W given by EC lawyers, if these interpretations were generally accepted before the date of issue of the legal text which is the subject of interpretation.

New rules of functional interpretation

The rules of functional interpretation allow us to derive legal norms from a legal text whenever rules of semiotic interpretation are insufficient or inappropriate to our task. The rules of functional interpretation are mainly based on valuation of aims, goals and intentions of the lawmaker. The set of such rules contains, for example, the following rules:

- it is forbidden to accept an interpretation of a legal text which contradicts the intentions explicitly expressed by the lawmaker,
- if the meaning of an expression W is not sufficiently clear after the process of semiotic interpretation, it is an obligation of the interpreter to make the meaning of the expression W clear in accordance with aims, goals and intentions expressed by the lawmaker.

The principle of superiority of *acquis communautaire* can be expressed by the following rules of functional interpretation:

- the weak rule of preference of the values of *acquis communautaire*,
- the strong rule of preference of the values of *acquis communautaire*.

According to the weak rule of preference of the values of *acquis communautaire*, if:

- the interpreter has used the rules of semiotic interpretation and after that
- the meaning of an expression W from a Polish legal text T remains not sufficiently clear for the purpose of the interpreter of that legal text, it is an obligation of the interpreter to make the meaning of the expression W clear in such a way that the norms derived from the text T containing the expression W are coherent with the system of generally accepted values of *acquis communautaire*. The system of generally accepted values of *acquis communautaire* can be reconstructed from interpretations given by the Courts of the European Communities and interpretations given by EC lawyers, even if these interpretations were not generally accepted before the date of issue of the legal text which is the subject of interpretation.

According to the strong rule of preference of the values of *acquis communautaire*, if:

- the interpreter has used the rules of semiotic interpretation and after that
- the meaning of an expression W from a Polish legal text T is sufficiently clear for the purpose of the interpreter of that legal text, however,
- the meaning of an expression W from a Polish legal text T is inappropriate from the point of view of EC values

it is an obligation of the interpreter to make the meaning of the expression W clear in such a way that the norms derived from the text T containing the expression W are coherent with the system of generally accepted values of *acquis communautaire*.

A new collision rule

The rules of collision are used to solve collisions of legal norms. The set of such rules contains, for example, the following rules:

- *lex posterior derogat legi priori* (later norms suppress earlier norms),
- *lex superior derogat legi inferiori* (superior norms suppress inferior norms),
- *lex specialis derogat legi generali* (particular norms suppress general norms).

The principle of superiority of *acquis communautaire* as a collision rule can be expressed in the following way: it is an obligation of the interpreter to ignore a norm derived from a Polish legal text by either the rules of semiotic interpretation or the rules of functional interpretation whenever this norm contradicts any norm of *acquis communautaire* (as a rule – a norm

of *acquis communautaire* contained in an European directive or an European regulation).

The system of law as a deductive system

It is possible to treat any system of law of continental Europe as an analogue of a deductive system:

- legal texts constitute the set of its axioms

and

- the generally accepted rules of legal reasoning constitute the set of its rules of inference³.

It is obvious for all logicians that the axiomatic form of a deductive system can be replaced by the form without any axioms (the form with rules of inference only). And vice-versa: the form of a deductive system without any axioms can be replaced by the axiomatic form. Let us look from that point of view at the system of Polish law. Before the accession it was constituted by the set of legal texts **T** and the set of generally accepted rules of legal reasoning **R**. After the accession we added a set **ET** of all legal texts of the European Communities to the set **T**. Also we added the above six rules of legal reasoning to the set **R**.

The following question can be considered:

- is the principle of superiority of *acquis communautaire*, expressed by the above six rules of legal reasoning, expressible in terms merely of the set **R** and the new set of valid legal texts **T + ET** (texts which are valid from the date of accession)?

In other words:

- can the principle of superiority of *acquis communautaire* be derived from the set of legal texts **T + ET** by former rules of legal reasoning (the rules from the set **R**)?

The principle of superiority of *acquis communautaire* vs. the constitution of Poland

First of all, the principle of superiority of *acquis communautaire* is not explicitly given in any legal text of the European Communities. It means that this principle cannot be derived from the set **ET** of legal texts of the European Communities only by the rules of **semiotic interpretation**.

³ Of course, it is not correct to say about any real system of law that this system is a deductive system. We are just talking about some possible **analogy**.

However, the above principle was derived from the set of legal texts of the European Communities. It was derived, thanks to the rules of **functional interpretation**, by the European Court of Justice, which has a power to interpret the community law. So, the European Court of Justice assumed that the principle of superiority of *acquis communautaire* is a part of *acquis communautaire*. In fact, the rules of functional interpretation which were used by the European Court of Justice are not elements of **R**, because they are related to the concept of effectiveness of the community law.

Thus the principle of superiority of *acquis communautaire* cannot be derived from the set of legal texts **ET** by the rules from the set **R**.

Moreover, even if we assume for a moment that it is possible to derive the principle of superiority of *acquis communautaire* from the set of legal texts **ET** by the rules from the set **R**, we will find one important problem: from the set of legal texts **T** by the rules from the set **R** a principle can be derived which contradicts the principle of superiority of *acquis communautaire*. The act of accession is just an international contract and from the point of view of our constitution it is placed below the constitution in our hierarchy of legal texts, however, it is placed higher than all other legal texts except the constitution.

Therefore, the principle of superiority of *acquis communautaire* cannot be derived from the set of legal texts **T + ET** by the rules from the set **R**.

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